

No. 24-3835

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**IN THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

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FEDERAL TRADE COMMISSION, *et al.*,

*Plaintiffs-Appellees,*

v.

AMAZON.COM, INC.,

*Defendant-Appellee,*

v.

AMERICAN BOOKSELLERS ASSOCIATION, INC.,

*Movant-Appellant.*

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On Appeal from the United States District Court  
for the Western District of Washington

No. 2:23-cv-1495

Hon. John H. Chun, District Judge

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**GOVERNMENT APPELLEES' RESPONSE  
TO APPELLANT'S MOTION TO SUBMIT APPEAL  
ON BRIEFS WITHOUT ARGUMENT**

Appellant, the American Booksellers Association, Inc. (“ABA”) has moved the Court to dispense with oral argument, issue a decision in this case by the end of the week “if feasible,” and expedite issuance of the mandate. The ABA did not consult with counsel for the government before filing this motion, as is ordinarily required. *See* 9th Cir. R. 27-1 advisory committee note 5 (“[U]nless precluded by extreme time

urgency, counsel are to make every attempt to contact opposing counsel before filing any motion and to either inform the Court of the position of opposing counsel or provide an explanation regarding the efforts made to obtain that position.”). The government appellees respond as follows.

1. As set forth in the government’s brief, the government continues to take no position on whether oral argument is necessary in this case. *See* Dkt. 29.1 at 32. The government also takes no position as to the timing of the Court’s decision.

2. The government opposes the ABA’s request that the Court issue a decision while deferring an opinion explaining the rationale for the Court’s decision. As explained in the government’s brief, deferring an opinion would interfere with the parties’ ability “to timely assess whether seeking further review might be warranted.” Dkt. 29.1 at 32.

3. The Court should deny without prejudice the ABA’s request that the panel expedite issuance of its mandate. Dkt. 46.1 at 2 n.1. The advisory committee note to Circuit Rule 41-1 explains that “[o]nly in exceptional circumstances will a panel order the mandate to issue immediately upon the filing of a disposition,” such as “where a petition for rehearing, or petition for writ of certiorari would be legally

frivolous; or where an emergency situation requires that the action of the Court become final and mandate issue at once.” The ABA has not identified any such “exceptional circumstances.” The proper course is for the ABA to move for an expedited mandate, should it still desire one, after this Court issues its decision.

October 9, 2024

Respectfully submitted,

/s/ Benjamin F. Aiken

Benjamin F. Aiken

*Counsel for Government Plaintiff-  
Appellees*